

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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MIKE SANTILLANES, a/k/a
MIGUEL DE LA GARZA

Plaintiff,

v.

NO. CIV 01-0091 JP/RLP-ACE

JOHN ALLEN,
In his individual capacity,

OTIS RODRIGUEZ,
In his individual capacity,

JOHN DOE 1,
In his individual capacity, and

JOHN DOE 2,
In his individual capacity,

Defendants.

**OTIS RODRIGUEZ' MOTION TO DISMISS No. III:
DISMISSAL OF ALL OF SANTILLANES' SECTION 1983 CLAIMS
AGAINST OFFICER RODRIGUEZ BASED ON THE TESTIMONY
GIVEN BY HIM DURING A STATE COURT SUPPRESSION HEARING**

Defendant, New Mexico State Police Officer Otis Rodriguez, (*hereinafter* referred to as "Officer Rodriguez"), through his attorneys French & Associates, P.C. (Luis Robles, Esq.) and pursuant to Fed.R.Civ.P. 12(b)(6) and D.N.M.LR-Civ. 7.3(a), respectfully requests that this Court grant his Motion to Dismiss No. III: Dismissal of All of Santillanes' Section 1983 Claims Against Officer Rodriguez Based on the Testimony Given by Him During a State Court Suppression Hearing.

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Pursuant to D.N.M.LR-Civ 7, a Memorandum in Support of this Motion is filed concurrently with this Motion.

Pursuant to D.N.M.LR-Civ. 7.2(a), Officer Rodriguez' counsel attempted in good faith to settle this Motion to Dismiss before it was filed. On November 19, 2001, Officer Rodriguez' counsel sent a letter to Plaintiff's attorney. *A copy of the letter, dated November 19, 2001, is attached as Exhibit A.* The letter requested that Plaintiff agree to the voluntary dismissal of his federal and state claims stemming from the testimony given at the state court suppression hearing based on the doctrine of absolute witness immunity. In a letter dated November 20, 2001, Plaintiff's counsel requested additional information upon which to base his decision. On November 28, 2001, Officer Rodriguez' counsel sent a draft of Memorandum in Support of this Motion. Officer Rodriguez' counsel's letter once again requested that Plaintiff agree to the voluntary dismissal of his federal and state claims by December 3, 2001. Plaintiff's counsel did not respond to Officer Rodriguez' second request.

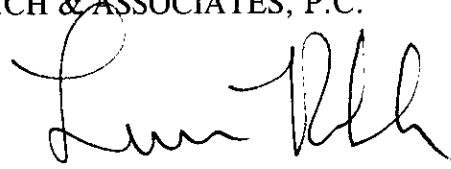
WHEREFORE, Defendant, Otis Rodriguez, respectfully requests that this Court grant his Motion to Dismiss No. III, dismiss all of Santillanes' Section 1983 claims against Officer Rodriguez based on the testimony given by him during a state court suppression hearing with prejudice, award Officer Rodriguez his attorney's fees and costs, and for all other relief this Court

deems just and proper.

Respectfully submitted,

FRENCH & ASSOCIATES, P.C.

By:



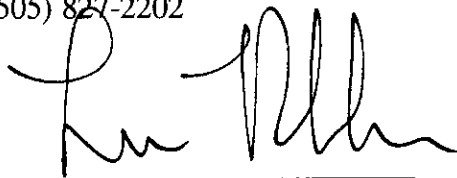
Luis Robles

Attorneys for Defendant Otis Rodriguez
500 Marquette Ave. N.W., Suite 600
Albuquerque, New Mexico 87102
(505) 843-7075

I hereby certify that a true and
correct copy of the foregoing was
sent via U.S. Mail this 3rd day of
December, 2001 to:

Joe Romero, Jr., Esq.
Attorney for Plaintiff Mike Santillanes
1905 Lomas Blvd., N.W.
Albuquerque, New Mexico 87104
(505) 843-9776

John E. DuBois, Esq.
RMD LEGAL BUREAU
Attorney for Defendant John Allen
P.O. Drawer 26110
Santa Fe, New Mexico 87502-0110
(505) 827-2202



Luis Robles

FRENCH & ASSOCIATES, P.C.

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Katherine E. Tourek

500 Marquette Ave. N.W., Suite 600
Albuquerque, New Mexico 87102
Tele: (505) 843-7075
Fax: (505) 243-3482

November 19, 2001

Joe Romero, Jr., Esq.
Romero & Associates, P.C.
1905 Lomas, Blvd., N.W.
Albuquerque, New Mexico 87104

COPY

RE: Santillanes Mike v. Allen, John, et al.,
CIV 01-0091 JP/RLP-ACE

Dear Mr. Romero:

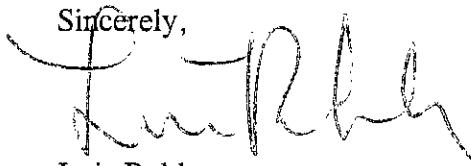
As required by D.N.M.LR-Civ. 7.2(a), the purpose of this letter is to determine whether you concur with or oppose a Motion to Dismiss No. III.

More specifically, Officer Rodriguez is considering the filing of the following Motion: Motion to Dismiss No. III: Dismissal of All of Plaintiff's Federal and State Claims Stemming from the Testimony Given at the State Court Suppression Hearing Based on the Doctrine of Absolute Witness Immunity.

Please let me know if you will concur with or oppose Officer Rodriguez' proposed Motion to Dismiss No. III on or before *Monday, November 26, 2001*. Otherwise, Officer Rodriguez will be forced to file an opposed Motion to Dismiss No. III. Certainly, Officer Rodriguez does not wish to incur the cost of drafting a Motion and Memorandum in Support if it is not opposed. To avoid this unnecessary cost, I trust that you will timely respond to my request.

If you have any questions or concerns, please call me. Thank you in advance for your attention to this matter.

Sincerely,



Luis Robles

LR/gms

cc: John E. DuBois, Esq.
Mr. Glen Bartlett, RMD Claims Bureau (CLNM-9901791-000)
John W. Wheeler, Esq.

EXHIBIT

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